

Office of the Integrity Commissioner

Town of Gravenhurst

DATE: November 16, 2020
TO: Members of Local Boards and Committees, Town of Gravenhurst
FROM: Suzanne Craig, Integrity Commissioner
RE: **Municipal Conflict of Interest Rules**

In July 2019, I prepared a memorandum to help Members of Council understand their obligations under the [Municipal Conflict of Interest Act](#) (“MCIA”) and to clarify some of the information provided at a June 25, 2019 Council Code of Conduct Information session. Relevant excerpts of the MCIA are set out in Appendix “A”.

I am providing this current Memorandum to assist Members of Local Boards of the Town in adhering to their obligations under the Gravenhurst Council Code of Conduct (the “Code”).

Relevant Code rules:

Application:

- (a) all Members of the Council of the Town of Gravenhurst, unless specifically provided, with necessary modifications to all Town committees, agencies and boards and commissions which are defined as local boards under subsection 1(1) and section 223.1 of the *Municipal Act, 2001*;

1.0 Statement of Principles

1.1 The following key statements of principle are intended to guide Members and assist with the interpretation of the Code:

- Members shall serve and be seen to serve the public in a conscientious and diligent manner;
- Members shall observe and act with the highest standard of ethical conduct and integrity;
- Members shall avoid the improper use of the influence of their office and act without self-interest;
- Members shall act and are expected to perform their functions with honesty, integrity, accountability and transparency;

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- Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and that will bear close public scrutiny;
 - Members shall be aware that they are at all times representatives of the Town as a whole and of Council, recognize the importance of their duties and responsibilities, take into account the public character of their function, and maintain and promote the public trust in the Town; and
 - Members shall uphold the spirit and the letter of the laws of Canada, Ontario and the laws and policies adopted by Council.

2.0 Definitions

f) *Conflict of Interest* means a situation in which a Member has competing interests or loyalties between the Member's personal or private interests and his or her public interests as an elected representative such that it might influence his or her decision in a particular matter;

n) *Non-Pecuniary Interest* means a private or personal interest that a Member may have that is non-financial in nature and that would be considered by a reasonable person, apprised of all the circumstances, as being likely to influence the Member's decision in any matter in which the non-pecuniary interest arises, and may include, but is not limited to, an interest that arises from a relationship with a person or entity

9.0 Improper Use of Influence

9.1 A Member shall not use the influence of their office or appointment for any purpose other than the exercise of his or her official duties in the public interest.

9.2 A Member shall not use the status of their position to influence the decision of another person to the private advantage or non-pecuniary interest of themselves, their parents, children or grandchildren spouse, associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves.

9.3 A Member shall not, in the exercise of an official power, duty, or function, give any form of preferential treatment to any person or entity based solely on the identity of the person or entity and or grant any special consideration or advantage in matters related to his or her position to any person or entity beyond that which is available to any other person.

10.0 Conflicts of Interest

10.1 A Member shall seek to avoid conflicts of interest, both pecuniary and non-pecuniary. A Member shall comply with the requirements of the *Municipal Conflict of Interest Act* with respect to obligations relating to pecuniary interests. A Member shall take proactive steps to mitigate any non-pecuniary conflicts of interest in order to maintain public confidence in the Town and its elected officials.

10.2 Members are encouraged to seek guidance from the Integrity Commissioner when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest, pecuniary or non-pecuniary

Purpose of the MCIA

The MCIA provides a legislative framework for Members of Council and Local Boards to identify and disclose their own personal pecuniary interest in any matter being or that will be considered at a meeting or that are/will be considered by staff in preparing recommendations to Council or Local Boards.

Identifying and Disclosing Personal Pecuniary Interests under the MCIA

Members should follow this analysis when assessing whether a personal pecuniary interest exists, whether to declare it, and how to handle the declaration process. The Code and MCIA set out that Members of Local Boards and Committees of the Town are required to comply with the requirements of conflict of interest rules and seek out advice in respect to their own personal situations. A Member may seek out advice from the Integrity Commissioner to assist in making their decision regarding whether they should disclose a personal pecuniary interest and refrain from participating in discussions and/or influencing the decisions of a matter for which they have a pecuniary or Code conflict. A Member may also consider obtaining independent legal advice to assist them in making their personal decision.

(1) Do you have a direct, indirect or deemed pecuniary interest as defined under the MCIA?

A pecuniary interest can be direct, indirect, or deemed.

A “pecuniary interest” is not defined in the MCIA but is generally considered a personal financial/monetary interest (whether positive or negative) in a matter that is subject of consideration at a meeting.

A “meeting” includes any regular, special, committee or other meeting (including Committee of the Whole).

The MCI A identifies a person with an “indirect pecuniary interest” if the Member, (a) is a shareholder in, or a director or senior officer of, a corporation¹, has a controlling interest in or is a director or senior officer of, a corporation², and is a member of a body, that has a pecuniary interest in the matter; or (b) is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

In addition, a Member may be “deemed” to have a pecuniary interest if the **parent, spouse, or child of the Member**, if known to the Member, has a pecuniary interest.

(2) If yes, are there any exceptions from the requirement to declare a personal pecuniary interest?

A Member who has a personal pecuniary interest may be exempt from the requirement to declare such interest if the Member, for example:

- is eligible for election or appointment to fill a vacancy, office or position on a Committee or Local Board of the municipality;
- is a director or senior officer of a corporation incorporated for the purpose of carrying on business for the municipality;
- may be entitled to an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit;
- has a pecuniary interest which is an interest in common with electors generally; or
- has an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the Member.

Please see section 4 of the MCI A for the full list of exceptions.

(3) What must you do if you identify a personal pecuniary interest?

Where a Member has identified a direct, indirect or deemed personal pecuniary interest that comes before a meeting of Council or Local Board, the Member who is present at the meeting is required to:

1. Verbally disclose the pecuniary interest prior to the matter being considered at the meeting;

¹ A corporation that does not offer its securities to the public.

² A corporation that offers its securities to the public.

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2. Not take part in the discussion of, or vote on any question in respect of the matter; and
 3. Not in any way attempt before, during or after the meeting to influence the voting on any question;
 4. If the meeting is closed under section 239 of the *Municipal Act*, leave the meeting.

If the Member is absent from the meeting, the Member must take the above steps 1 to 3 at the first meeting attended by the Member after the meeting referred to above.

The MCIA imposes obligations on a Member where she or he has an actual or perceived conflict of interest. A Member is personally responsible for identifying whether they have a pecuniary interest in a matter being discussed at a Council or Committee meeting. A Member is under no statutory or Code of Conduct obligation to identify a potential conflict of interest that another Member may have in a matter. The determinant for declaring a conflict of interest under the MCIA is not whether the personal interest will actually affect the way the Member will behave in that role, but rather if a reasonable elector, given all the information about the Member's circumstances, would consider that the interest would influence the Member's action and decision on the question. The requirement is a personal one and rests with the Member her or himself to determine if the conflict rules apply to them.

In summary, when a Member has a pecuniary interest to which no exception applies:

- Declare the conflict and disclose general nature of interest before discussion occurs
- Do **not** participate in discussions (including discussions via email and social media)
- Do **not** attempt to influence
- Do **not** vote
- If closed meeting, leave the meeting
- If absent, declare at next meeting

(4) What are some best practices that a Member should follow when deciding on whether she or he has a personal pecuniary interest.

Although the following are not required under the MCIA, Members should consider adopting the following best practices:

- Proactively determine whether you or your family have an interest which could pose a conflict and document those efforts (i.e. a due diligence letter)
- Carefully review meeting Agendas to become aware of any matter before it comes up

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- Discuss potential conflicts of interest with Integrity Commissioner
 - Consider seeking independent legal advice
 - Carefully review Minutes to ensure declaration of conflict and general nature of interest has been documented in proper location in the Minutes (and in the public registry as of March 2019)
 - Make declarations at all meetings, including committees (as the matter may be considered at more than one meeting)
 - After declaring to have a pecuniary interest and leaving the meeting room of a closed meeting, ensure the departure is documented in the Minutes
 - If the matter is being discussed in public session, it is a good practice to leave the meeting room as it visibly demonstrates that the Member is making no attempt to influence the discussion or the outcome of the voting.

(5) How is a Code Conflict different from a MCIA Conflict: Code Contravention - Improper Use of Influence:

The Town of Gravenhurst, has enacted a Code of Conduct that include (Improper Use of) Influence rules that prohibit a Member of Council or Local Board from using the influence of his or her office for any purpose other than for the exercise of his or her official duties. Examples of prohibited conduct under Improper Use of Influence rules include the use or the perception of using one's status as a member of Council to improperly influence the decision of another person (for example, staff or other Council/Board Members) to the private advantage of oneself, or family members or business associates or holding out of the prospect of promise of future advantage through a Member's supposed influence within Council in return for present actions or inaction.³

Whether a Member is interacting with other Members of Council, Local Board, Town staff, Committee Members or the public, the intent of the Code provision is to prohibit behavior or actions that would unduly influence or be perceived to influence a government decision to the advantage of the Member or third parties. This includes "bias", "pre-judgement" and "closed mindedness". When considering whether or not a Code conflict exists, it is important to consider whether there are any grounds for a reasonable person to think that one exists". This prohibition should be read together with the general principles of the Code.

³ Lorne Sossin, Formerly Dean of Osgoode Hall Law School, 2011.

Impartiality is a statement of mind in which the Councillor is disinterested in the outcome and is open to persuasion by the staff reports and public submissions and all information that comes before Committees and Council. Bias denotes a state of mind that is in some way predisposed to a particular result or that is closed in regard to a particular issue.⁴

Members are required to be free from bias and prejudice in respect of the decisions that are part of a Member's political and legislative duties. When investigating a Code of Conduct complaint, the Integrity Commissioner will use the **reasonable apprehension of bias** test.

[T]hat test is 'what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?'

Rule 2.3 of the Code requires Members to avoid the improper use of influence and prohibits them from extending preferential treatment to individuals or organizations in which they have a non-pecuniary interest:

A Member shall not use his or her position to seek to influence a decision of another person, council or local board to the private advantage or non-pecuniary interest of themselves, their parents, children or grandchildren, spouse, or friends or associates, or for the purpose of creating a disadvantage to another person or for providing an advantage to themselves

Members of Local Boards, including Business Improvement Associations (BIAs), though voluntary in their roles, will have a common understanding that they will not participate in activities that grant, or appear to grant, any special consideration, treatment, or advantage to an individual which is not available to every other individual and they will not advocate on behalf of an individual family member or business to which they belong. Members of the public appointed to Local Boards and Committees are appointed at the pleasure of Council or in accordance with the appointment rules. They do not hold office nor do they represent a constituency within the community. Members of the public appointed to Local Boards and Committees must respect both the word and spirit of the Council Code of Conduct.

⁴ *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 (S.C.C.) at paras 91, 99, 104-105

No Local Board and Committee Member may act beyond the mandate of the Local Board and Committee granted by Council. They must not undertake, direct discussions with residents, hold informal meetings or communications to Council outside the statutory approved processes, including the Planning Act and pursuant to the Procurement By-law, and other policies of the Town.

Members commit to uphold the democratic, professional and ethical values enshrined in the governing legislation and policies of the jurisdiction within which they have been appointed. It is important that the Town's appointed Local Board and Committee members do not step outside of their official roles to grant or to be perceived to have assisted themselves, private entities or persons in their dealings with the Town where this would result in preferential treatment to the entities or persons. Some examples of guidelines to follow to avoid a real or perceived conflict of interest in any planning or procurement process would include the Members:

- avoiding participation in procurement actions or the planning process outside of the established statutory process, the non-adherence to which would place the Member in a real, potential or apparent conflict of interest with his or her official duties due to the Board and Committee;
- prohibiting the appearance of collusion in the bidding process for contracts for the performance of work, the supply of goods or the rendering of services by separating the phases of the process and distinguishing those who participate in the development of the call documents, the submission of bids and the evaluation of the vendors;
- prohibiting the participation in the bidding process of any vendor or advocating the position of a person or body with a real or perceived conflict of interest that may give them an unfair advantage in bidding on Town contracts (wearing two hats).

Local Board and Committee Members should avoid making public statements in their official or personal capacity on matters for which they may be required to make recommendations in their official capacity as a Local Board or Committee Member. By stating a position on a matter in one's personal capacity or that advocate the position that benefits a family member or body to which the member or the family member has a private relationship, the individual who is also a Local Board or Committee Member, has in effect, identified an entrenched position that may be viewed as a reasonable apprehension of bias. Local Board and Committee Members, in fulfillment of the official duties, are required to step away from prejudgment and consider all relevant facts brought before Local Board and Committees for recommendation.

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Finally, Local Boards and Committees as a whole, should only provide its comments on a statutory process or in respect of Council or Board decisions, in accordance with the rules of the governing statute and/or Town policies (i.e. Planning Act, Municipal Act, Procedural By-law, Human Resources policies).

Concluding Remarks

A number of important changes to the MCIA came into force on March 1, 2019 including, for example, enhanced jurisdiction of the Integrity Commissioner to receive Code complaints alleging that a Member of Council or a Local Board has contravened the rules of the MCIA.

Members are always encouraged to seek clarification on their MCIA and Code obligations from the Integrity Commissioner or by obtaining independent legal advice.

If you have any questions, please contact:

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APPENDIX "A"

RELEVANT EXCERPTS FROM THE MUNICIPAL CONFLICT OF INTEREST ACT

Definitions

1 In this Act,

"child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

"controlling interest" means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;

...

"interest in common with electors generally" means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part;

...

"meeting" includes any regular, special, committee or other meeting of a council or local board, as the case may be; ("réunion")

...

"parent" means a person who has demonstrated a settled intention to treat a child as a member of his or her family;

...

"spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage

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Indirect pecuniary interest

2 For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

Interest of certain persons deemed that of member

3 For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

Exceptions

Where s. 5 does not apply

4 Section 5 does not apply to a pecuniary interest in any matter that a member may have,

(a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;

(b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;

(c) by reason of the member purchasing or owning a debenture of the municipality or local board;

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(d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;

(e) by reason of having an interest in any property affected by a work under the Drainage Act or by a work under a regulation made under Part XII of the Municipal Act, 2001 or Part IX of the City of Toronto Act, 2006, as the case may be, relating to local improvements;

(f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the Assessment Act;

(g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;

(h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;

(i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;

(j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

Duty of Member

When present at meeting at which matter considered

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

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(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1).

Record of Disclosure

Disclosure to be recorded in minutes

6 (1) Every declaration of interest and the general nature thereof made under section 5 shall, where the meeting is open to the public, be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the committee or local board, as the case may be.

Idem

(2) Every declaration of interest made under section 5, but not the general nature of that interest, shall, where the meeting is not open to the public, be recorded in the minutes of the next meeting that is open to the public.

...